

Update: Managing a Trial Under The Controlled Substances Act

CHAPTER 5

Other Offenses Under the Controlled Substances Act

5.7 Offenses Involving Drug Paraphernalia

A. Definition of Paraphernalia

Add the following bulleted text on the bottom of page 127 before subsection (B):

- ♦ MCL 333.7457(d) exempts “[e]quipment, a product, or material which may be used in the preparation or smoking of tobacco or smoking herbs other than a controlled substance” from the general prohibition against the sale of drug paraphernalia. Although such items as pipes, bongs, and “dug-outs” are specifically designed to introduce a controlled substance into the body, these items are exempt from the definition of “drug paraphernalia” because they *may be* used to smoke tobacco and other non-controlled substances. *Gauthier v Alpena County Pros*, ___ Mich App ___, ___ (2005).

CHAPTER 15

Sentencing

15.6 “Substantial and Compelling Reasons” to Depart from Minimum Prison Terms

B. Michigan Supreme Court’s Definition of “Substantial and Compelling”

2. Post-Arrest Factors Are Not Disfavored

Insert the following text on the bottom of page 340:

A trial court may properly consider an individual’s postprobation conduct when imposing a sentence of imprisonment following revocation of the individual’s probation. *People v Hendrick*, ___ Mich ___, ___ (2005). A court may look to an individual’s postprobation conduct to determine whether substantial and compelling reasons warrant a departure from the minimum sentence range recommended under the legislative guidelines. *Hendrick, supra* at ___.

An individual’s probation violation alone—without regard to the specific conduct underlying the violation—may constitute a substantial and compelling reason to depart from the sentencing guidelines. *People v Schaafsma*, ___ Mich App ___, ___ (2005). According to the *Schaafsma* Court:

“[A]ny probation violation represents an affront to the court and an indication of an offender’s callous attitude toward correction and toward the trust the court has granted the probationer. The violation itself is objective and verifiable, so we see no reason why a court must focus exclusively on the underlying conduct, especially since the conduct itself may be punished in a separate proceeding. We conclude that the offender’s probation violation itself is an objective and verifiable factor worthy of independent consideration. Since the probation violation is objective and verifiable, in its discretion the trial court may conclude that the factor provides a substantial and compelling reason to depart from the sentencing guidelines.” *Schaafsma, supra* at ___.